



12 SEP 2007

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In re Application of	:	DECISION
MURUYAMA et al.	:	
Application No.: 09/890,799	:	
PCT No.: PCT/US99/02445	:	
Int. Filing Date: 05 February 1999	:	
Priority Date: None	:	
Attorney Docket No.: 58086.244181	:	
For: THERMO-REVERSIBLE POLYMER FOR	:	
INTRALUMENAL IMPLANT	:	

This decision is in response to applicants' "REQUEST FOR CORRECTED NOTICE OF ACCEPTANCE AND FILING RECEIPT" filed in the United States Patent and Trademark Office (USPTO) on 07 June 2007, which has properly been treated as a petition under 37 CFR 1.181.

#### BACKGROUND

On 05 February 1999, applicant filed international application PCT/US99/02445 which designated the US and did not claim a priority date. A copy of the international application was communicated to the USPTO from the International Bureau on 10 August 2000. The thirty-month period for paying the basic national fee in the United States expired at midnight on 06 August 2001 (05 August 2001 being a Sunday).

On 03 August 2001, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the basic national fee.

On 04 September 2001, a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 12 April 2002, the United States Designated/Elected Office (DO/EO/US) mailed a NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 CFR 1.495 (Form PCT/DO/EO/903) according to the application a 35 U.S.C. § 371(c)(1), (c)(2), and (c)(4) date and a 35 U.S.C. 371 date of 02 January 2002.

On 08 December 2003, a first Office action on the merits was mailed.

On 19 August 2004, applicants filed a petition to revive the application which was accompanied by, *inter alia*, a USPTO postcard receipt date-stamped 30 January 2002 itemizing a declaration of inventors and a copy of a declaration of inventors.

On 17 November 2004, a decision was mailed granting applicants' petition to revive.

On 7 June 2007, applicant submitted the instant "REQUEST FOR CORRECTED NOTICE OF ACCEPTANCE AND FILING RECEIPT" which has properly been treated as a petition under 37 CFR 1.181.

### DISCUSSION

The NOTICE OF ACCEPTANCE OF APPLICATION mailed 12 April 2002 contained the incorrect address and inventor name. The NOTICE also contained the incorrect international 35 U.S.C. § 371(c)(1), (c)(2), and (c)(4) and 35 U.S.C. 371 date. A declaration of inventors in compliance with 37 CFR 1.497(a)-(b) does not appear in the file. Thus, the requirements of 35 U.S.C. 371(c)(4) have not been met and no 35 U.S.C. § 371(c)(1), (c)(2), and (c)(4) and 35 U.S.C. 371 should have been accorded. According the 12 April 2002 NOTICE OF ACCEPTANCE is hereby VACATED.

The petition filed 19 August 2004 included a postcard receipt date-stamped 30 January 2002 by the USPTO itemizing a declaration of inventors and a copy of a declaration of inventors. However, the declaration is signed by only one of the three inventors (Yuichi Mori) and thus is not in compliance with 37 CFR 1.497(a)-(b).

The inventorship has been corrected.

Applicant urges that the response to the NOTIFICATION OF MISSING REQUIREMENTS was mailed 04 December 2001 but that the response was date-stamped by the USPTO as having been received 30 January 2002 and that this date-stamp must be incorrect. However, there were many excessive delays in delivery of United States Postal Service Mail during this time because of the anthrax scare.

### CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

For the reasons set forth above, the NOTICE OF ACCEPTANCE OF APPLICATION mailed 12 April 2002 is **VACATED**.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT

Legal Administration.

A proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. A proper response must include a declaration of inventors in compliance with 37 CFR 1.497(a)-(b). (If applicants have already filed such a declaration, a petition under 37 CFR 1.181 should be filed. An itemized postcard receipt will serve as prima facie evidence of receipt. See MPEP § 503.) Extensions of time under 37 CFR 1.136(a) are available. Failure to timely file a proper response will result in abandonment of the application.



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